Supreme Court, U. S.
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No. 76-584

In the Supreme Court of the United States

OCTOBER TERM, 1976

JAMES SINCLAIR, PETITIONER

v.

THE HANOVER INSURANCE COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner was detained and searched by deputy United States Marshals at the Los Angeles airport. Subsequently he brought this suit against the United States Marshal, the deputies involved, and the insurance company that had issued a surety bond on the Marshal, claiming violation of his constitutional rights. The district court dismissed the action against the insurance company and the Marshal, who was not personally involved in the detention and search, and granted summary judgment for the deputies.

On appeal, the Ninth Circuit affirmed the dismissal of the insurance company, on the ground that the United States had not suffered any loss which would require the insurance company to perform its promise to indemnify, holding by implication that the bond was solely for the benefit of the United States. The court remanded the action against the Marshal and his deputies for further proceedings (Pet. App. A2 to A6).

On remand, on December 7, 1976, the district court dismissed the action from the bench because petitioner failed to appear for trial. We are informed that an order of dismissal was entered on December 21, 1976.

This case presents no issue warranting review by this Court at this time.

The order entered by the district court on December 21, 1976, dismissing the underlying suit in this case, essentially renders this petition moot. Although the dismissal may be subject to reconsideration by the district court or review on appeal, no suit for damages presently exists against the Marshal, his deputies, or the United States, for which the Hanover Insurance Company might be held liable on its bond. Under the circumstances, therefore, there is no reason for this Court to resolve the question whether Hanover could be liable under the terms of its bond.

Moreover, the scope of the bond is an issue of no continuing importance. Surety bonds such as the one herein involved are no longer required. Act of June 6, 1972, Section 101(a), 86 Stat. 201.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1977.